MOTION FILED

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 947

TEN INDIVIDUAL DEFENDANTS, NET LIMITED, INC. AND SPECIAL INVESTMENTS, INC., *Petitioners*

v.

INDIAN LAKE ESTATES, INC., *Respondent*

MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA, WITH COPY OF BRIEF ATTACHED

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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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The undersigned respectfully moves the Court for leave to file a brief *amicus curiae* in support of the petition for writ of certiorari, pending herein, and attaches hereto a copy of such brief. As ground therefor movant states that in said brief he draws to the attention of the Court the impact of the decision below upon commercial corporate borrowers in the District of Columbia and upon the economy of the District of Columbia. These matters have not been presented by

the parties. Consent to the filing of this motion has been requested of petitioners and respondent; petitioners have consented but respondent has withheld its consent.

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The undersigned as *amicus curiae* urges the Court to grant the pending petition for a writ of certiorari. The decision below that corporations barred by Congress from pleading "statutes against usury" may nevertheless plead the Loan Shark Law, D.C. Code (1961) §§ 26-601 - 26-611, is of major importance not only to lenders, but also to sophisticated corporate borrowers engaged in enterprises for which commercial

bank financing is not readily available. The undersigned as *amicus curiae* respectfully draws the attention of the Court to the ill consequences of the decision below to such borrowers.

At least since 1954—until the decision below was handed down—both lenders and borrowers have proceeded in the belief that corporations could not plead the Loan Shark Law as well as other usury statutes. As a direct consequence of the decision below, lenders who might otherwise continue making loans to corporations have discontinued this business because of fear that the borrower might plead the Loan Shark Law. This drying up of the credit market has adversely affected sophisticated commercial borrowers in the District of Columbia.

The Court below holds that ever since 1954 corporations have been barred from pleading general usury statutes by the District of Columbia Business Corporation Act, D.C. Code § 29-904(h), empowering corporations to borrow money "without regard to the restrictions of any usury law". 350 F. 2d 435, 440-441; Appendix A to petition herein, pp. 10a-11a. The 1963 amendment precluding corporations from pleading "any statutes against usury", says the court, "simply clarified the applicable law . . ." 350 F. 2d at 441; Appendix A at 11a.

However, the court below now holds that despite the broad language of the statutes—in 1954, "any usury law", and in 1963, "any statutes against usury"—Congress intended to deny to corporations only the general usury statute remedy, and to leave them free to plead the Loan Shark Law. This comes as a startling development.

The Congressional policy adopted in 1954, depriving corporations of remedies afforded by usury statutes, now prevails in 23 states. Curran, *Trends in Consumer Credit Legislation* (1965) 19, n. 53. That policy rests on the conviction that corporations are sophisticated commercial borrowers and that commerce is furthered by making it clear that such borrowers cannot invoke usury remedies. *Comment,* 23 Md. L. Rev. (1963) 51, 54, 55.

The policy barring corporations from pleading general usury statutes applies with equal force to the Loan Shark Law. "Usury" is excessive interest, and the Loan Shark Law is a specialized usury law, for it regulates the rate of interest. Thus, the statute applies only to the business of loaning money at more than 6%, and it permits a licensed lender to charge 12%. D.C .Code (1961) §§ 26-601, 26-605. The Loan Shark Law is a small loan statute of a kind which is "in force in all states except Alaska". Curran, *op. cit. supra,* 16. When Congress acted in 1954 and 1963, small loan acts such as the D.C. Loan Shark Law were uniformly regarded as specialized usury laws, and Congress in barring corporations from pleading "any usury law" and "any statutes against usury" must have intended by that language to embrace the Loan Shark Law. See Curran, *op. cit. supra,* 16; Hubachek, *Progress and Problems in Regulation of Consumer Credit,* 19 Law and Contemp. Prob. (1954) 4. The decision below points to no reason for nullifying the intent of Congress so clearly expressed.

The consequences of the decision, if allowed to stand, are bizarre. The Loan Shark Law, like similar small loan acts, was primarily intended to protect small consumer borrowers, who might otherwise be the victims

of loan sharks.[1] But the statute has been construed to mean that although licensed lenders are authorized to make loans up to $200, a loan by an unlicensed lender is illegal even though it exceeds this maximum. *Hartman* v. *Lubar,* 77 U.S. App. D.C. 95, 133 F. 2d 44 (1942). Thus, since 1942 the Loan Shark Law as construed by the court below has embraced commercial loan transactions as well as loans for consumption. It was the clear intent of Congress when it acted in 1954 and again in 1963 to remove from the operation of the statute commercial loan transactions where corporations are borrowers.[2] The decision below frustrates and defeats that intent. The result prejudices sophisticated commercial borrowers and adversely affects the economy of the District of Columbia.

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[1] However, because the Loan Shark Law permits an interest rate lower than that of other small loan acts, the statute has been virtually inoperative ever since its enactment in 1913. Hubachek, *The Drift Toward A Consumer Credit Code* (1949) 16 U. Chi. L. Rev. 609, n. 23; H. Rept. 1629, 72d Cong., 1st Sess., p. 2; Woll, *Organized Labor Views the Loan Shark Problem,* 19 Law and Contemp. Prob. (1954) 96, 100; Robinson and Nugent, *Regulation of the Small Loan Business* (1935) 246. In actual fact the small consumer loan business has gone to the Maryland and Virginia suburbs, where similar small loan acts provide the lenders with a higher legal interest rate.

[2] We do not take issue with *Hartman* v. *Lubar,* and Congress has not acted to nullify the holding in that case that the Loan Shark Law applies to commercial loans made to individual borrowers. What Congress did in 1954 and 1963 was to withdraw from the scope of usury statutes, including the Loan Shark Law, commercial loans involving corporations as borrowers. It is obvious that Congress intended to bring the law of the District of Columbia into alignment with that of Maryland and Virginia, which by statute have long barred corporations from pleading usury. Anno. Code of Md. (1957) Art. 23, § 125; Code of Va. (1950) § 6-351.

If the decision stands, a corporate borrower may not plead the general usury statute, D.C. Code (1961) § 28-2703, which provides for forfeiture of interest, but is nevertheless free to plead the Loan Shark Law, which operates to forfeit both principal and interest, *Hartman* v. *Lubar, supra.* Clearly, lenders will not subject themselves to such risk. This shutting off of an established source of credit negates the intent of Congress.

It is believed that the decision below is so insupportable that eventually it will be overruled. In the meantime, however, so long as it stands, it creates confusion and insecurity among commercial lenders and borrowers. The problem is so widespread and the decision has such major impact that this Court should grant certiorari.

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